

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT

NORTHERN DIVISION

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MIGUEL ORTEGA, and BENJAMIN)
ORTEGA,)

Plaintiffs,)

vs.)

CITY OF OAKLAND, et al.,)

Defendants.)

**CERTIFIED
COPY**

No. C 07-02659 JCS (ADR)

DEPOSITION OF GENESIS PRECIADO

OAKLAND, CALIFORNIA

THURSDAY, MAY 15, 2008

REPORTED BY:

INGRID SKOROBHATY

CSR NO. 11669

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1 know we parked on the sidewalk.

2 Q. And after you guys parallel-parked on 62nd,
3 did you guys get out of the cars?

4 A. We all got off -- well, we -- originally, not
5 all of us got out of the cars, since the car just moved
6 right around, so Miguel just moved it and just parked it
7 there and was still hanging out, because there was
8 shade, and it was a hot sunny day.

9 Q. At some point all of you guys got out of the
10 car, though?

11 A. Yeah.

12 Q. After everybody got out of the car, what did
13 you guys do next?

14 A. After everybody got out of the car, we was
15 still just hanging out. We was hanging out for a long
16 time, just hanging out there, because there was a cousin
17 of his who lives right there on 62nd.

18 Q. Do you know the name of the cousin who lived
19 on 62nd?

20 A. No, I don't know their name.

21 Q. Where was that house on 62nd, where the cousin
22 lived?

23 A. It was -- there's an empty vacant. It's,
24 like, the first house from the empty vacant.

25 Q. Were there any other cars -- I just want to

1 rewind just for a second.

2 Were there any other cars in that parking lot
3 at the same time you guys were in the parking lot?

4 A. I don't remember.

5 Q. When you guys were in the parking lot, do you
6 remember seeing any police cars driving by or stopping?

7 A. Well, yeah. There was officers driving up and
8 down the street.

9 Q. Up and down East 14th?

10 A. Yeah.

11 Q. And you saw them as you were --

12 A. We were just hanging out, and we just seen --
13 we seen the cops driving, doing their job, driving on
14 International Boulevard.

15 Q. Did any cops stop or say anything to you guys?

16 A. No, not at the time.

17 Q. Did you see Miguel or Benjamin at that time --
18 while you guys were hanging out at the car after Miguel
19 had parked it on the street, did you see anybody, Miguel
20 or Benjamin or any of the other group of people that you
21 were with, go into the house on 62nd?

22 A. No. Nobody went in.

23 Q. Is there a little yard in front of that house
24 on 62nd?

25 A. Yeah, in front.

1 Q. Did any of the people go inside the yard,
2 maybe not in the house, but in the yard part?

3 A. I don't remember.

4 Q. Were there people at the house on 62nd that
5 joined your group?

6 A. I don't remember.

7 Q. By the time you guys had gotten to the house
8 on 62nd, you guys had parked outside of it, how many
9 people were in your group at that time?

10 A. I don't remember the number.

11 Q. Was it about ten? More or less than that?

12 A. I really don't remember.

13 Q. It was more than five?

14 A. I don't remember.

15 Q. You were there at that time, right?

16 A. Yes.

17 Q. And Benjamin and Miguel?

18 A. Yes.

19 Q. And at least the three other cousins that
20 drove around with you guys in different cars.

21 A. But somehow they ended up having, like, their
22 wives, kid, so I really don't remember the number.

23 Q. So more people joined your group after you
24 guys had gotten to 62nd; is that fair to say?

25 A. Yes.

1 Q. You said you guys were at -- hanging out
2 outside the car for a while as it was parked on 62nd.

3 A. Yeah.

4 Q. At any time did you and the rest of the group
5 leave that particular area?

6 A. You're not talking about the beginning
7 anymore, right?

8 Q. No. I'm talking about now. You've already
9 got to 62nd. Miguel already moved the Suburban to the
10 shaded place, and you testified earlier you had hung out
11 there for a little while, right?

12 A. Yeah.

13 Q. Now I'm asking you, from that point, is there
14 any -- did you guys leave that area?

15 A. Yeah. We left -- we went to, like, the corner
16 of 62nd and East 14th.

17 Q. Is that the entire group?

18 A. No. Some of us.

19 Q. Who was in your group that went to the corner
20 of International and 62nd?

21 A. For sure, that I remember, it was Benjamin and
22 Miguel.

23 Q. And you?

24 A. And myself. Sorry.

25 Q. Anybody else that -- any other people that you

1 might -- that you recall going with you guys?

2 A. No.

3 Q. Is it possible that there were other people in
4 the group?

5 A. Yeah, there was more. I just don't remember
6 who, but it wasn't the whole group either.

7 Q. Can you estimate how many more people besides
8 just you, Miguel -- besides just you and Miguel, how
9 many other people might have been in that group that
10 went to 62nd and International?

11 A. No.

12 Q. Was it less than five people?

13 A. No. It was more than five.

14 Q. Was it less than ten people?

15 A. Yeah, probably less than ten people.

16 Q. So between five and ten people?

17 A. Yeah, around -- yeah.

18 Q. Was Benjamin carrying a flag of any kind at
19 that time?

20 A. I don't remember.

21 Q. Was anybody carrying a flag of any kind at
22 that time?

23 A. Well, some of them had the Mexican bandanna,
24 but I don't remember anybody having a flag, because --
25 you said at the time, right?

1 Q. At that time, yes.

2 A. No.

3 Q. And when you guys got to the corner as a
4 group, what did you guys do there?

5 A. We were just there and, like, hanging out.
6 The whole time we was hanging out, but we was shifting.
7 So when we was there, there was car -- there was, like,
8 friends that drove by or just people we didn't know but
9 that were our same ethnicity, and they were part of the
10 festival, and they would just shout "hey" or honk or
11 "hey," you know.

12 Q. Did anybody in your group go out to the
13 street, like, to -- the way I would describe it probably
14 wouldn't be appropriate, but did anybody go out in the
15 street to greet some of the people coming by or anything
16 like that?

17 A. No, because they were all in cars. It was,
18 like, "hey," like a two-second thing. We didn't get to
19 see the faces.

20 Q. Did anybody in your group at any time leave
21 the sidewalk to go --

22 A. At the time?

23 Q. Yes, at the time.

24 A. Oh, no.

25 Q. So at that time everybody in your group stayed

1 on a corner and just --

2 A. Because I remember that there was --
3 Benjamin's friend and my friend, he was walking from --
4 he wasn't at 64th, but he was walking from 64th to 62nd,
5 and he just met up with us, and he was just there for a
6 little while, so that's about it. Like, the friends
7 that we met up with at the corner.

8 Q. Do you remember the name of that friend?

9 A. Fernando.

10 Q. Does he have a nickname or anything?

11 A. I don't remember.

12 Q. Are you familiar with somebody named "Green
13 Eyes"?

14 A. "Green Eyes"? No.

15 Q. You said Fernando just stayed with you for a
16 little bit and then left?

17 A. Yeah. He was just there for a little bit.

18 Q. You don't know Fernando's last name, do you?

19 A. No.

20 Q. Do you know a phone number for him?

21 A. No.

22 Q. And you don't have his address?

23 A. No, I don't know his address. I just know him
24 from school.

25 Q. How long did you guys stay at the corner?

1 A. At any time?

2 Q. On May 7th.

3 A. Any time, right?

4 Q. At any time. I'm asking you now at any time
5 did you see Benjamin --

6 A. Yeah, he had a Mexican flag.

7 Q. When is the first time on that day that you
8 saw Miguel with a Mexican flag?

9 MR. JACOBSEN: You mean Benjamin?

10 MR. HIGA: Right. Benjamin. It's
11 6:00 o'clock for everybody.

12 THE WITNESS: Well, I seen him -- I was too
13 focused to whoever was out in the street, and then I see
14 a Mexican flag. I don't remember who had it, but it
15 ended up being in Benjamin's hands.

16 MR. HIGA: Q. When you saw this Mexican flag
17 that ended up being in Benjamin's hands, was this before
18 or after the big group of you went back to the house or
19 back to the rest of the group?

20 A. Well, we went back, and I was at the corner at
21 the time. Then that's when I saw the stick and the flag
22 at the top.

23 Q. And when you first -- when you say that it
24 ended up in Benjamin's hands, where was Benjamin
25 standing the first time you saw him with the flag?

1 A. In the corner.

2 Q. On the street?

3 A. In the sidewalk.

4 Q. Of 62nd and International?

5 A. Yes.

6 Q. Now, before that, you said you saw the flag in
7 the street, but you didn't know who was carrying it at
8 the time.

9 A. Yeah. I don't remember who was carrying it at
10 the time.

11 Q. Could you see what was going on with that flag
12 in the street? In other words, did it look like, when
13 you saw the flag, that the person carrying it was
14 walking across the street, or walking through traffic?
15 Can you describe what you saw?

16 A. I remember that he walked -- he walked
17 across --

18 Q. Benjamin?

19 A. Yeah.

20 -- between the pedestrian walkway, and then he
21 stood on the other corner or the other side of 62nd. He
22 waved it, waited till the walking man came back on, and
23 walked right back.

24 Q. So the first time you saw the flag in
25 Benjamin's hand, he was on your side of 62nd and

1 International?

2 A. Yeah.

3 Q. And then the next thing you saw is Benjamin
4 walking with the flag across the street going across
5 International away from you?

6 A. Yes.

7 Q. On the same side of the street or the opposite
8 side of the street as you?

9 A. On the same side of the street.

10 Q. So the first time you saw Benjamin with the
11 flag he was on the same corner as you?

12 A. Yes.

13 Q. Now, did Benjamin cross the street with the
14 flag going away from you?

15 A. Can you repeat that again?

16 Q. As Benjamin was walking across the street with
17 the flag, the first time he was walking away from you?

18 A. Yes. The first time, he was walking away from
19 me.

20 Q. Did you see him -- did you see any police
21 officers in the area while he was walking across the
22 street with the flag?

23 A. No, I didn't see -- no. I didn't see no
24 police officers at the time when he was crossing.

25 Q. And then you said that Benjamin crossed right

1 back toward you?

2 A. Yes.

3 Q. Did he make it all the way to the opposite
4 corner?

5 A. Yeah. He made it all the way, and he stopped,
6 because when he was crossing, lights were red on both
7 sides as you walk across, not side, so then the cars
8 started passing by, and he was on the other side. We
9 was on this side, howling "hey." He waited till the
10 walking man came back on, walked back.

11 Q. As he was walking back, did you see any police
12 cars?

13 A. Yeah. There was a police officer in the
14 parking lot that we were parked earlier.

15 Q. There was an officer, or a police car?

16 A. There was a police car with two officers.

17 Q. Is that parking lot on the same side you're
18 standing on?

19 A. It's on the opposite side.

20 Q. It's right behind you, then?

21 A. The corner would be here, and the parking lot
22 would be -- like, the sidewalk will end, and then the
23 parking lot starts.

24 Q. And so the first time you saw that police car
25 with those two officers in the parking lot was when

1 Benjamin was walking back with the flag toward you; is
2 that right?

3 A. Well, we seen 'em parked previously.

4 Q. Where did you see 'em parked?

5 A. In the same spot.

6 Q. And when you say "previously," what point did
7 you see them before you saw them at this time?

8 A. I don't remember the time or what was I doing,
9 but what I could say is that I remember we was all back
10 in the corner, and then we seen a police officer come in
11 the parking lot and park, but then we wasn't doing
12 anything wrong -- that was the reason why we stayed and
13 "hey, hey" -- because if we were, we would have got our
14 attention called immediately, which we didn't.

15 Q. So as Benjamin was walking back across the
16 street toward you with the flag and you saw the officers
17 in the parking lot --

18 A. Yes.

19 Q. -- that was the second time you saw those same
20 officers in the parking lot?

21 A. No. I was facing the street, and there was --
22 I guess it was still parked back here. It's common
23 sense they were still parked. And when he was halfway
24 across the street, that's when the police officers rode
25 onto the street.

1 Q. This is while Benjamin is walking back toward
2 you?

3 A. Back toward us.

4 Q. Is there anybody else on that same corner with
5 you, standing with you?

6 A. Yeah. Some other people were there, still
7 there.

8 Q. Can you name any other people still standing
9 there with you?

10 A. The only person I can recall is Fernando.
11 There was more people of course, but the only person I
12 remember is Fernando.

13 Q. Was Miguel on that corner too?

14 A. Yes. Sorry.

15 Q. And so you said as Benjamin is walking back
16 toward you, that's when that police car that was in the
17 parking lot turned or came out of the parking lot?

18 A. Yes.

19 Q. Where did that police car stop?

20 Did it stop?

21 A. Before the parallel lines.

22 Q. In what lane of traffic was that police car?

23 A. It was on the opposite side.

24 Q. What do you mean by that?

25 A. He was -- I seen that he didn't -- he wasn't

1 on the side he supposed to be on. Like, he was on the
2 oncoming traffic lane.

3 Q. So if I were to tell you that East 14th or
4 International goes from downtown Oakland to San Leandro,
5 was he in the lane -- was the police officer in the lane
6 of traffic facing -- as though you were going to
7 San Leandro, or as though you were going to --

8 A. He was in the lane facing towards San Leandro.

9 Q. But the car was facing the opposite direction?

10 A. Yes.

11 Q. So the car was facing as though it was going
12 to Oakland?

13 A. Yes.

14 Q. And did the police car stop right at the
15 lines?

16 A. Yeah. He stopped before the lines.

17 Q. When the police car stopped right at the
18 intersection, where was Benjamin? Where was he as he
19 was walking across? Was he halfway across?

20 A. He was right before halfway.

21 Q. Did the cops' lights -- did they have the
22 lights on?

23 A. No. It was just like as if a normal car had
24 come out and stopped.

25 Q. Except it was going in the wrong direction?

1 A. Yes. It was going in the wrong direction.

2 Q. Did Benjamin just keep walking across the
3 street?

4 A. Yeah. He kept walking across the street.

5 Q. Was the light still green for him?

6 A. Yeah. He still had the walking man.

7 Q. Did the officers -- did the officers say
8 anything after they had stopped at the intersection?

9 A. Well, they stopped, and then they -- I seen
10 the car was here, and Benjamin was still here, and the
11 officers, both of them, observed him, as he walked right
12 in front, and they waited till he passed a little bit by
13 them, and then that's when the officer said, "Put that
14 flag away now, before we shove it up your ass."

15 Q. So you heard the officer say -- you heard the
16 officer say that?

17 A. Yeah, I heard him.

18 Q. And you said the officer said that just after
19 Benjamin had passed their car, coming toward you?

20 A. Yeah, because he even looked back to see who
21 was talking to him.

22 Q. So Benjamin looked back after you heard the
23 police officers say what they said?

24 A. Yeah, because we never had in mind they was
25 going to say anything. He was crossing the street,

1 holding the Mexican flag. There wasn't nothing wrong.

2 Q. Did Benjamin stop and look back?

3 A. No. He kept walking, kept walking. He was
4 just looking back.

5 Q. You said there were two officers in the car?

6 A. Yeah, two officers.

7 Q. Do you know which of the two officers, the
8 driver or the passenger said --

9 A. The driver.

10 Q. After Benjamin looked back, did he stop, or
11 did he keep walking to the corner where you were?

12 A. No. He kept walking.

13 Q. Did Benjamin say anything in response?

14 A. No. He stayed quiet and kept walking.

15 Q. Did anyone say anything in response to the
16 officers?

17 A. His brother Miguel.

18 Q. What did Miguel say?

19 A. He said -- he said, "Be quiet, you fat ass."

20 Q. Did the officer say anything in response to
21 that?

22 A. He did, but I don't remember the words.

23 Q. Can you estimate how far away from the
24 officers you were when you heard him say what he said?

25 A. No. I was still at the corner. They was in

1 the street. I don't remember the distance.

2 Q. Was it, like, a car length away? Can you
3 remember that?

4 A. Excuse me.

5 Q. Do you have to get that?

6 A. No. I just need to turn it off.

7 What was the question? I'm sorry.

8 Q. Can you remember if it was, like, a car length
9 away?

10 A. Oh, no. No. I don't remember because -- I
11 don't remember because East 14th has two lanes -- two
12 lanes on this side, and two lanes on this side, two
13 lanes, so I don't remember.

14 Q. Do you remember if the police car was in the
15 lane right in front of you or in the lane --

16 A. He wasn't in the lane right there. He was,
17 like, more in the other lane.

18 Q. But he was kind of, like, between two lanes?
19 Is that what you're saying?

20 A. Yeah, but on the other side.

21 Q. And when Miguel said what he said to the
22 officer, do you know where Benjamin was? Did Benjamin
23 keep walking, or stop at the corner with you guys?

24 A. The officers?

25 Q. No. Benjamin.

1 A. Benjamin, he kept walking until he made it
2 back to the corner.

3 Q. And when Benjamin got to the corner, did he
4 stop and hang out with you guys, or did he keep walking
5 to the house?

6 A. No. He stopped with us. He stayed there.

7 Q. Did Benjamin say anything to you when he got
8 to the corner?

9 A. No, because at the moment -- at the moment,
10 they were arguing, the officers and Miguel, so we were
11 just listening, but I don't remember the words.

12 Q. Did Benjamin turn around? Was he looking at
13 his brother? Was he looking at the officers when this
14 argument was happening?

15 A. We was all paying attention to what was going
16 on.

17 Q. Did that argument, that verbal exchange, did
18 that end at some point, between the officers and Miguel?

19 A. It ended after they kicked us off the corner.

20 Q. What did they tell you?

21 A. At first, they didn't say anything. At first
22 it was just those comments. Then they left. They had
23 left, but then they kept -- I don't know. I guess they
24 wanted to catch us doing something we wasn't supposed to
25 because they just stayed in that little area. They

1 left, not probably very far, because they came right
2 back, and then they stopped again in the same parking
3 lot. Then they kicked us out.

4 Q. So after Benjamin came back to the corner and
5 Miguel and the officers got into the argument, the
6 officers left?

7 A. Yeah, they left.

8 Q. And you guys stayed at the corner?

9 A. Yeah, we still stayed at the corner.

10 Q. And Benjamin is with you, still at the corner
11 at that time?

12 A. Yeah, he's still with us at the corner.

13 Q. And then you said the officers came back; is
14 that right?

15 A. Yeah.

16 Q. Do you remember -- can you estimate how much
17 time passed? Like, five minutes before they came back,
18 or more than that? less than that?

19 A. I don't really remember, because we wasn't
20 paying attention. We always get that from policemen.

21 Q. But they came back fairly quickly?

22 A. Yeah.

23 Q. Did Benjamin go back out into the street with
24 the flag?

25 A. No.

1 Q. He stayed on the corner with you guys the
2 whole time?

3 A. Yeah, because the officer said to put it away.
4 He had said put it away or else he was going to, you
5 know, do that.

6 Q. So when the officer -- you said the officers
7 came back to the parking lot?

8 A. Yeah.

9 Q. And at that time did the officers say anything
10 to you guys?

11 A. No.

12 Q. When the officers got back to the parking lot,
13 did you guys do anything in response? Did you leave the
14 corner? What did you guys do?

15 A. No, we didn't leave the corner. We stayed
16 there. They were still there, and they got to the
17 parking lot, and we stayed in the corner.

18 Q. I'm talking about when they came back to the
19 parking lot.

20 A. Yeah. When they came back, we were still at
21 the corner.

22 Q. And Miguel was still there?

23 A. Yeah.

24 Q. And Benjamin was still there?

25 A. Yeah.

1 Q. Did Benjamin still have the flag at that time,
2 when the officers came back?

3 A. I don't remember.

4 Q. Was there another exchange -- when the
5 officers came back to the parking lot, was there another
6 exchange at that time between your group, Miguel, and
7 the officers?

8 A. I don't understand your question.

9 Q. Was there another argument, or did the cops
10 tell you to leave the corner?

11 A. There wasn't another argument, but they
12 probably didn't like the fact we were on the corner, so
13 then they told us first, "Get away from -- get off the
14 corner."

15 Q. You got your hand kind of close to your -- did
16 they use the bullhorns or something to do that?

17 A. No. They verbally said it. They told us,
18 "Get off the corner. We don't want you guys on the
19 corner."

20 Q. Did they come up to you guys and say that, or
21 just yell it from the car?

22 A. I don't remember how it happened, but the
23 point is that we moved from the corner and we went back
24 to where the Suburban was parked.

25 Q. Can you estimate how long after the cops got